

EXTENSIONS OF REMARKS

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2023

SPEECH OF

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 13, 2022

Ms. LEE of California. Madam Speaker, I rise in support of our amendment, Lee/Meijer number three eight seven, to express the sense of Congress that Authorizations for the Use of Military Force should include sunset provisions.

I want to thank my cosponsors, including Congressman MEIJER, and Chairmen SMITH and MCGOVERN for their support to permit me to offer this amendment.

Under our Constitution, Congress has the unique responsibility of oversight authority over the use of military force. Congress should maintain authority over when and how the United States wages war. And we should insist that the executive branch have a clear plan, objective and time limit for these authorizations.

The purpose of a sunset clause is not to withdraw our military before it has achieved its goal. Rather, it is to make sure that Congress, as the people's elected representatives, exercises our responsibility to ensure any use of military force is supported by and serves the interests of the American people.

Legal experts from across the ideological spectrum support the inclusion of sunset provisions in AUMFs. And Congressionally-required sunsets are not a new idea. Congress has included sunset provisions in 29 percent of prior authorizations for use of military force and declarations of war.

A sunset is not any sign of lack of American resolve. Congress has shown it can and will act quickly and decisively when core American interests and values are at stake. In 1941 and again in 2001, Congress acted within twenty-four hours of the President's request for authority to wage war.

I include in the Record an article written by Dr. Tess Bridgeman regarding the importance of AUMF sunset provisions. Dr. Bridgeman is a former legal advisor to the White House and State Department, and an expert on the constitutional law regarding war powers. Dr. Bridgeman writes:

"Arguably far more important than any potential signal that might be sent to a foreign adversary, a reauthorization requirement sends a very real and important signal to our own troops: Congress supports the war effort you are engaged in and has taken a tough vote to authorize it. And if you are brave enough to fight, we are brave enough to vote."

Madam Speaker, this amendment is a reasonable expression of Congress' role and the founders' intent on matters of war and peace. We cannot write blank checks to the executive branch. Requiring AUMFs to include sunsets ensures that any use of war powers is in line with the views and priorities of the American

people, expressed through the ballot box. I urge my colleagues to support this amendment, and support the principle that wars must have an end.

[From Just Security, July 13, 2022]

IN SUPPORT OF SUNSETS: EASY YES VOTES ON AUMF REFORM

(By Tess Bridgeman)

As Congress readies for votes on the must-pass National Defense Authorization Act (NDAA), several amendments related to authorizations for use of military force (AUMFs) merit attention as easy "yes" votes that could help restore Congress' congressional authority over when to take the nation to war. Three of these are simply long-overdue good war powers hygiene, repealing old "zombie" AUMFs (as Rep. Peter Meijer (R-MI) has coined them) that are not relied on for any current U.S. operations but could be susceptible to abuse. These are Rep. Barbara Lee's (D-CA) 2002 AUMF repeal amendment (with bipartisan co-sponsors), Rep. Abigail Spanberger's (D-VA) repeal of the 1991 AUMF, and Rep. Meijer's repeal of the 1957 AUMF. Another bipartisan amendment, co-sponsored by Reps. Lee and Meijer, takes the small but important step of declaring the "sense of Congress" that any new AUMF should include a date on which the authorization is terminated unless reauthorized by Congress, a.k.a. a sunset.

While settling on the details of any new AUMF will be challenging, the bipartisan sunset amendment should be another easy yes vote for members, and the Biden administration should support it. The full text of the sense of Congress provisions are as follows:

(1) the inclusion of a sunset provision or reauthorization requirement in authorizations for use of military force is critical to ensuring Congress's exercise of its constitutional duty to declare war; and

(2) any joint resolution enacted to authorize the introduction of United States forces into hostilities or into situations where there is a serious risk of hostilities should include a sunset provision setting forth a date certain for the termination of the authorization for the use of such forces absent the enactment of a subsequent specific statutory authorization for such use of the United States forces.

Making good on this sense of Congress in any future AUMF would go a long way toward fixing a pernicious problem that has developed over the past few decades, as old AUMFs have been construed to authorize wars against enemies that did not exist at the time of their enactment and about which Congress never deliberated. A sunset clause guards against that kind of misuse and abuse. It should not be understood as an "off switch," but rather as a vote forcing mechanism. By shifting the default away from forever authorizations, it ensures that the peoples' representatives affirmatively debate and decide whether the United States should be at war, and against whom, as the Constitution intended. And it ensures that our troops doing the fighting are foregrounded in these deliberations.

WHO SUPPORTS SUNSETS?

First and foremost, Congress itself has supported sunsets by enacting them into law in roughly one-third of past AUMFs and dec-

larations of war. Recent serious proposals for new AUMFs have also included sunsets, including those supported, and authored, by the executive branch: the ISIL-specific draft AUMF President Obama sent to Congress in 2015 included a three-year sunset clause.

Second, former senior officials serving in administrations of both political parties support sunsets. In May 2017, former CIA and Department of Defense General Counsel Stephen Preston advocated that a sunset clause shows the United States is "committed to the fight" and "committed to our democratic institutions." On this score, Heather Brandon-Smith's overview of exchanges on the value of a sunset provision in a July 2017 House Foreign Affairs Committee hearing titled "Authorization for the Use of Force and Current Terrorist Threats" is worth quoting in full:

The witnesses were repeatedly asked whether a sunset provision should be included in a new AUMF, with many members of Congress—on both sides of the aisle—agreeing on the merits of including a sunset. Both [former Attorney General Michael] Mukasey and [former National Counterterrorism Center Director Matthew] Olsen advocated in favor of sunsets . . . "As experts across the political spectrum have explained," said Olsen, "a sunset does not end the war. Rather, a sunset signals to our partners and adversaries that the U.S. is committed to using the force required to combat the current threats we face, even as we sustain the fight for as long as it takes."

Mukasey, who noted in his written statement that he does not generally favor sunsets in the intelligence gathering or counterterrorism authorities, advocated for a sunset in a new AUMF. "I favor a sunset provision," he said. "I've favored reconsidering the [2001] AUMF for years."

More recently, in March 2021, former Republican and Democratic administration senior lawyers at a House Rules Committee hearing on war powers (in which I testified), agreed on the need to include sunset provisions in future AUMFs. (Ryan Goodman, Steve Pomper, Steve Vladeck and I also supported including a three-year sunset in our set of principles for any new AUMF in 2021).

Third, leading experts and former senior officials who have considered how new AUMFs should be structured have long endorsed inclusion of sunsets. A set of principles for a new AUMF from leading legal experts Rosa Brooks, Sarah Cleveland, Jen Daskal, Walter Dellinger, Ryan Goodman, Harold Hongju Koh, Marty Lederman, and Steve Vladeck published in Just Security in November 2014 endorsed a sunset. They explained that sunsets, along with other constraints in the proposal, avoid unnecessary wars and promote democratic accountability. Eight years later, these are even more imperative goals.

Another set of principles for a new AUMF from Ben Wittes, Bobby Chesney, Jack Goldsmith, and Matt Waxman at Lawfare, coincidentally released on the same day in Nov. 2014, explicitly endorsed a three-year sunset to "forc[e] Congress to make an affirmative decision as to whether, and how, it wants its blessing to continue." Indeed, inclusion of a sunset is seen as a key point of consensus among these leading proposals for any new AUMF.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

BUT WOULD A SUNSET HELP THE ENEMY OR
HAMSTRING THE EXECUTIVE BRANCH?

At a House Foreign Affairs Committee hearing last March, an administration witness surprisingly did not support the inclusion of sunsets in AUMFs because “we do not want to say to our adversaries at some date if they just hold out they can do whatever they please.” The Biden administration should shift that position—and embrace Reps. Lee and Meijer’s amendment—for at least three reasons.

First, there’s simply no reason to believe a congressional reauthorization requirement, or sunset, would send such a signal to an adversary. It is doubtful that adversaries in foreign countries—often primarily engaged against non-U.S. enemies—are at all concerned with U.S. domestic law authorizations. But even if we were to try to glean external signals from a domestic reauthorization requirement, as former State Department Legal Adviser Harold Hongju Koh said in 2015, “a sunset is not a repeal; it need not even be read as a proposal to repeal in the future. . . . A sunset is simply a shared congressional-executive agreement to reassess the situation together as a nation.”

If anything, a reauthorization requirement shows that Congress is paying attention to the war it has authorized and will continue to do so. And notwithstanding legitimate concerns of partisan Capitol Hill gridlock, Congress manages to pass NDAA’s, budgets, and other high-stakes legislation when needed.

Second, U.S. political leaders and the national security institutions that support them make decisions about the scale of U.S. involvement within and outside of conflict zones based on a range of factors, including the severity and immediacy of the threat, resource constraints, and the willingness and reliability of partners on the ground to act. A brief look at the past three presidential administrations underscores this point: it was not the expiration of an AUMF that caused President Biden to withdraw U.S. forces from Afghanistan, Trump to announce withdrawal from Syria (before reversing course), or Obama to withdraw from President George W. Bush’s war in Iraq.

It bears emphasizing here that in any true emergency situation, under threat of an imminent armed attack or in a situation where U.S. nationals are in imminent peril abroad, the president may rely on independent authority in Art. II of the Constitution to act quickly (as most presidents in our recent history have done), regardless of the existence of any congressional authorization.

Third, and arguably far more important than any potential signal that might be sent to a foreign adversary, a reauthorization requirement sends a very real and important signal to our own troops: Congress supports the war effort you are engaged in and has taken a tough vote to authorize it. And if you are brave enough to fight, we are brave enough to vote.

A reauthorization requirement also signals—both internally and externally—a commitment to our own democratic processes. That commitment is now more important than ever for members of Congress and the executive branch to embrace.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2023

SPEECH OF

HON. ROBERT C. “BOBBY” SCOTT

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 13, 2022

Mr. SCOTT of Virginia. Mr. Speaker, I rise today in opposition to several provisions included in this year’s National Defense Authorization Act (NDAA) Reauthorization, although ultimately, I will vote in favor for final passage of the bill.

First, I oppose Amendment 640, considered on the floor as part of en bloc Amendment 5, which directs the Office of Management and Budget (OMB) to reclassify public safety telecommunications officers, also called 911 dispatchers, as a protective service occupation in the U.S. Government’s Standard Occupational Classification (SOC) system. This Amendment would have no direct effect on these workers’ wages, benefits, or other resources; proponents of this reclassification have stated that it “would provide validation.”

The SOC classification system is a federal statistical standard used across agencies in data collection. According to OMB, “[t]he SOC is designed exclusively for statistical purposes.” Changes to the codes affect multiple data sources frequently used by policymakers, researchers, and employers, including the American Community Survey, the nation’s largest household survey; the Current Population Survey (CPS), the key source of our monthly employment numbers; and the Occupational Employment Statistics (OES), the authoritative source of employment and wage information by occupation. These changes would undermine the intent and legitimacy of the SOC by deviating from the long-established process designed to ensure the objectivity and integrity statistical data classifications more broadly.

A standing committee at OMB, the SOC Policy Committee (SOCPC), is responsible for maintaining the accuracy of these codes using well-defined principles. The SOCPC undertakes a routine revision of the codes roughly once per decade; the process spans multiple years and “involves extensive background research, periods or public comment, review of comments, and implementation of revisions.” During its latest revision, which began in early 2012 and was finalized in 2018, OMB specifically rejected comments requesting it reclassify 911 dispatchers as directed in Amendment 640. In response to public comments presented in the May 2014 Federal Register, the Obama Administration’s OMB explained it “did not accept these recommendations based on Classification Principle 2, which states that workers are coded according to the work performed. The work performed is that of a dispatcher, not a first responder.”

In 2016, OMB declined a similar request for reclassification. Based on the principles OMB’s policy committee applies to determine SOC codes, 911 telephone dispatchers are already properly and accurately classified. This point was reiterated in communications with the Education and Labor Committee in 2021, explaining, “After an extensive technical review of the requested reclassification for 911 dispatchers, OMB, consistent with the recommendation of the Chief Statistician of the

United States, decided not to make such an adjustment because it is inconsistent with the statistical purposes of the SOC.”

Furthermore, the Bureau of Labor Statistics (BLS), in a written communication with the Education and Labor Committee on September 15, 2021, reported that the change made by H.R. 1175, a bill identical to Amendment 640, “will introduce costly, unnecessary logistical and data interpretation delays and challenges affecting the quality of data.” Moreover, changes outside of the routine revision process would undermine the goal of data continuity, limiting data sources’ usefulness for their key purpose of statistical analysis; create precedent for disrupting the standard SOC revision process; and undermine the SOCPC’s authority as experts to apply the classification principles to determine what accuracy requires.

Public safety telecommunications officers perform critical, challenging work. They deserve our honor and gratitude for their efforts. However, considering the many alternative ways policymakers could confer “validation,” as the proponents are seeking, there is little policy justification for this Amendment’s approach to achieving that goal. Furthermore, the SOC is not intended to rank or group occupations by education, credentials, earnings, benefits, or any other user-defined indicator of status.

In conclusion, mandating a change to a statistical code would not affect these workers’ wages, benefits, or other resources—but it would disrupt data series continuity; require significant additional work for government agencies, researchers, employers, and others; and intervene in an official, routine government data-collection and statistical process.

Second, I oppose language in the bill, added by Amendment 113 considered on the floor as part of the en bloc Amendment 2, which would expand the Troops-to-Teachers program from recruiting veterans to become teachers, to recruiting veterans to fill a longer list of school-based positions including school resource officers (SROs). Increasing the presence of SROs can have a particularly harmful effect on students of color and students with disabilities. Nationally, Black and Latinx youth make up over 58 percent of school-based arrests while representing only 40 percent of public school enrollment, and Black students are more than twice as likely to be referred to law enforcement or arrested at school as their white peers. According to a 2018 study by GAO, Black students, boys, and students with disabilities are also disproportionately disciplined in K–12 public schools.

Moreover, the amendment removes crucial language from the definition of “eligible school” which would target resources to high-poverty schools. This is concerning with regard to the recruitment of key positions such as teachers, school leaders, and counselors to meet the needs of students in high-poverty schools, particularly as high-poverty schools have been disproportionately impacted by recent staffing shortages.

Finally, I oppose section 572 of the bill, added to NDAA during the full committee markup of the bill on June 23. The Department of Defense Education Activity (DoDEA) plays a critical role in educating the children of our nation’s military families. Across the globe, DoDEA coordinates the education of more than 60,000 children. Importantly, the DoDEA